



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/736,313      | 12/15/2003  | Peter R. Dluzneski   | GEO-12969.001       | 5468             |

7609 7590 07/01/2004

RANKIN, HILL, PORTER & CLARK, LLP  
925 EUCLID AVENUE, SUITE 700  
CLEVELAND, OH 44115-1405

|          |
|----------|
| EXAMINER |
|----------|

ANTHONY, JOSEPH DAVID

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1714

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                                  |  |
|------------------------------|-------------------------------|----------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/736,313 | Applicant(s)<br>DLUZNESKI ET AL. |  |
|                              | Examiner<br>Joseph D. Anthony | Art Unit<br>1714                 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claim 1 is indefinite in regards to the inter-relationship of the two process steps of "forming" as set forth at the beginning of lines 2 and 4 of the claim. To overcome this confusion the examiner suggests that applicant amend claim 1 as followed:

In line 4, directly before the word "forming" insert the word --separately--.

In line 5, after the word "acid" insert --of said mixture--.

In line 6 after the word "dispersing" delete the word "the" and insert therefor the word --said--.

Dependent claims 3 and 5 are indefinite in regards to the phrase "or dispersion" said phrase lacks antecedent basis within independent claim 1 from which both said dependent claims ultimately depend. The examiner suggests that the phrase "or dispersion" be deleted from both claims 3 and 5 to overcome this problem.

All other claims are rejected here because they are dependent on rejected base claims.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over originally filed claim numbers 14-22, 24 and 26 (now renumbered as claims 12-20 in the Notice Of Allowability by the present Examiner) of copending Application No. 10/306,802. Although the conflicting claims are not identical, they are not patentably distinct from each other because the allowed claims of the co-pending application are deemed to be a subset of the pending claims in the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claims Free Of Prior-Art Rejections***

5. Claims 1-12 are deemed to be free of any prior-art rejections. The closest pieces of prior-art are deemed to be as followed:

A) Roesler et al. U.S. Patent Number 6,086,785 teaches inorganic and organic peroxy compounds that are stabilized by an aqueous coating solution or suspension comprising: 1) an alkali metal or alkaline earth metal soap, and 2) a sulphonate surfactant or a sulphate surfactant, see column 2, lines 19-26, column 5, line 13 to column 6, line 40, examples 4-5 and claims. The taught method of making the stabilized solid peroxy compounds is using a lodge mixture or spraying the coating composition onto the peroxy compound followed by drying. Applicants' claims are patentable distinct from Roesler et al's invention in that Roesler et al's process uses preformed alkali metal or alkaline earth metal soaps to coat the peroxy compound. This is unlike applicants' claimed process which comprises adding to a mixture which comprises an organic peroxide and a C<sub>4</sub>-C<sub>30</sub> carboxylic acid a separately prepared aqueous solution comprising a compound that reacts with said carboxylic acid in said mixture to produces a first water-soluble soap followed by reacting said water-soluble soap with a polyvalent metal compound to produce a water-insoluble soap that forms a precipitate that further comprises the organic peroxide.

B) Wylegala et al. U.S. Patent Number 4,455,252 teaches phlegmatization of organic peroxides by water-insoluble soaps (e.g. zinc stearate or calcium stearate or barium stearate or manganese stearate), see abstract, column 2, lines 1-23, column 3, line 7 to column 4, line 6, and the examples. After looking over the Wylegala et al patent the examiner is unable to find any specific disclosure to the method(s) used to produce the claimed phlegmatized

organic peroxides by water-insoluble soaps. Applicants' claims are thus deemed to be patentable distinct over Wylegala et al's invention in that Wylegala et al's fails to disclose or suggest applicants' claimed process which comprises adding to a mixture which comprises an organic peroxide and a C<sub>4</sub>-C<sub>30</sub> carboxylic acid a separately prepared aqueous solution comprising a compound that reacts with said carboxylic acid in said mixture to produces a first water-soluble soap followed by reacting said water-soluble soap with a polyvalent metal compound to produce a water-insoluble soap that forms a precipitate that further comprises the organic peroxide.

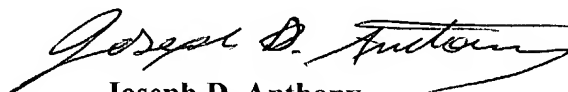
C) Chauvier et al. U.S. Patent Number 4,861,506 teaches stabilized particles of peroxygen compounds chosen from alkali metal persalts which are stabilized by the use metal ions derived from partially water-soluble organic or inorganic metal salts, such as zinc benzoate, zinc butylrate and zinc citrate. The taught method of making the stabilized alkali metal persalts is one of spraying a solution containing the metal ions (e.g. a metal salt) onto the inorganic alkali metal persalt. Applicants' claims are patentable distinct from Chauvier et al's invention in that Chauvier et al's process uses preformed metal containing compounds (e.g. zinc benzoate, zinc butylrate and zinc citrate) to coat the inorganic peroxy compound, see abstract, column 2, lines 49-64 and column 3, lines 10-60. This is unlike applicants' claimed process which comprises adding to a mixture which comprises an organic peroxide and a C<sub>4</sub>-C<sub>30</sub> carboxylic acid a separately prepared aqueous solution comprising a compound that reacts with

said carboxylic acid in said mixture to produces a first water-soluble soap followed by reacting said water-soluble soap with a polyvalent metal compound to produce a water-insoluble soap that forms a precipitate that further comprises the organic peroxide.

D) Sawada et al. U.S. Patent Number 6,310,117 teaches a method for coating wax or resin particles with a water-insoluble metallic soap. Sawada et al's method is almost identical to applicants' claimed method with the patentable distinction being that Sawada et al's method coats wax or resin particles instead of coating applicants' claimed organic peroxide component. There is absolutely no disclosure of suggestion of any kind within the Sawada et al's patent to substitute organic peroxides for the directly taught wax or resin particles.

**Examiner Information**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Joseph D. Anthony whose telephone number is (571) 272-1117. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (571) 272-1119. The centralized FAX machine number is (703) 872-9306. All other papers received by FAX will be treated as Official communications and cannot be immediately handled by the Examiner.



**Joseph D. Anthony**  
**Primary Patent Examiner**  
**Art Unit 1714**

6/28/04